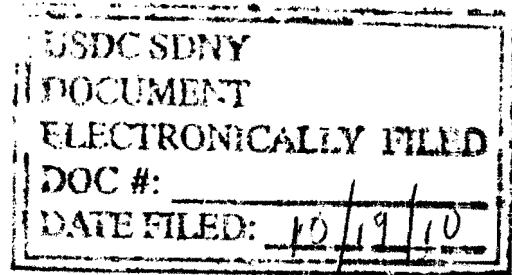


UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



-----x
CLARENDON NATIONAL INSURANCE :
COMPANY, et al. :

Plaintiffs, :

-against- :

TRUSTMARK INSURANCE COMPANY, :

Defendant. :
-----x

ORDER

09 Civ. 9896 (BSJ) (MHD)

MICHAEL H. DOLINGER
UNITED STATES MAGISTRATE JUDGE:

This Order responds to defendant's letter application dated October 8, 2010 and the exchange of letters from the parties that followed this court's October 12, 2010 endorsed order establishing a schedule for parties to make legal arguments supporting their positions. Defendant has requested that the court rule that plaintiffs have waived privilege regarding an email inadvertently produced by plaintiffs, find subject-matter waiver, hold an in camera review of all documents on plaintiffs' privilege log concerning TIG or the Treaty Level Allocation or the claim-by-claim offsets, and grant defendant additional time to hold depositions.

Defendant's various applications regarding this email verge on the frivolous. First, the email plainly is covered by the attorney-client privilege, as it contains legal advice based on the attorney's assessment of the effect of various agreements between the parties. Second, plaintiffs, having disclosed the document, consent to defendant's use of it in this lawsuit with only one minor deletion (the so-called Exhibit B version), thus giving defendant the benefit of the substance of the legal advice and seeking to delete only one minor segment that is without substance although technically part of a privileged communication. Third, the substance of the advice -- which plaintiffs consented to allow defendant to use -- simply confirms the known and documented position that plaintiffs took in determining offsets. Fourth, given the volume of production by plaintiffs, the mistaken disclosure of this one document despite its privileged status cannot be deemed a waiver of any sort, and in any event -- as noted -- plaintiffs have consented to its use with one minor redaction. Fifth, these circumstances do not remotely justify subject-matter waiver of any sort. Sixth, defendant utterly fails to justify either any in camera review or any reopening of discovery.

Dated: New York, New York
October 19, 2010

SO ORDERED.



MICHAEL H. DOLINGER
UNITED STATES MAGISTRATE JUDGE

Copies of the foregoing Order have been sent today to:

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